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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. PAUL RICHARD SOLIZ, Defendant and Appellant.	B207663 (Los Angeles County Super. Ct. No. PA060034)

APPEAL from a judgment of the Superior Court of Los Angeles County, Alice C. Hill, Judge. Modified and, as so modified, affirmed.

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Victoria B. Wilson and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Paul Richard Soliz appeals from the judgment entered following a jury trial that resulted in his convictions for dissuading a witness by force or threat and second degree robbery. Soliz was sentenced to a prison term of six years.

Soliz contends: (1) the evidence was insufficient to support his conviction for dissuading a witness by force or threat; (2) the trial court erred by failing to instruct on theft, a lesser included offense to robbery; (3) the trial court made a variety of other instructional errors; and (4) the trial court committed sentencing error by imposing and staying a sentence enhancement, rather than striking it. Soliz also requests that this court review the sealed transcript of the trial court's in camera review of police personnel records (*People v. Mooc* (2001) 26 Cal.4th 1216.) We modify the judgment to strike, rather than stay, a Penal Code section 667.5, subdivision (b) one-year sentencing enhancement.[1] In all other respects, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

a. Prosecution's case.

On July 29, 2007, at approximately 2:30 p.m., Vijayakumar Subramanian parked his Acura Integra in a Chatsworth parking lot while he picked up his lunch at a restaurant. Subramanian accidentally left his keys in the car. When he returned approximately 10 minutes later, his car was gone. He had not given anyone permission to drive or take his vehicle. He called police. Los Angeles Police Department Officers Darryl Williams and Ted Watson responded to the call and took a report from Subramanian.

Approximately one and one-half hours later, as a result of their investigation, the officers learned that Christopher Thomas had stolen the car. Thomas, who had the keys, led them to the vehicle. One of the officers drove the Integra and Thomas back to the restaurant and summoned Subramanian. Thomas was handcuffed and placed in the back seat of a police cruiser.

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[1] All further undesignated statutory references are to the Penal Code.

While Thomas was seated in the police cruiser, he was allowed to speak with his girlfriend. Appellant Soliz arrived on the scene, informed an officer that he was a friend of Thomas's, and asked what was happening. Thomas pointed at Subramanian's Integra, which was parked in front of the restaurant, and said, "I stole that car." Soliz spoke to Thomas for approximately 15 minutes and agreed to take care of Thomas's personal business while Thomas was in jail.

Meanwhile, Subramanian provided the police with personal information for their incident report, including his address, phone numbers, driver's license number, date of birth, and vehicle information. Officer Watson gave Subramanian a copy of the report, printed on yellow paper. Subramanian placed the report inside his Integra, between the front seats. Subramanian observed Soliz and Thomas's girlfriend speaking to Thomas.

Subramanian drove from Devonshire Boulevard to Topanga Boulevard, toward his home. He soon realized he was being followed by a car that was tailgating him. The car passed him on the right, cut in front of him, and stopped abruptly in the street, forcing Subramanian to stop in the left hand lane of Topanga Boulevard. Subramanian wrote down the vehicle's license number. Soliz exited the other car, walked to the driver's side of the Integra, and motioned for Subramanian to open his car door. Subramanian recognized him as the individual he had seen talking to Thomas. Afraid, Subramanian complied and opened the car door.

Soliz reached into the Integra, across Subramanian's body, and without permission and against Soliz's will, took the police report. In a loud, "scary," and "threatening" voice, Soliz stated, " 'Don't come to court with this paper. And my friend got arrested. He's going to jail. Don't come to court,' " and " 'you better not testify against my friend.' "[2] Subramanian understood these statements to mean he should not come to court and testify against Thomas. Soliz then drove off with the report.

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[2] An officer testified that Subramanian had told him Soliz made this latter statement. Subramanian was unable to recall the statement at trial.

Subramanian was afraid during the entire encounter. He alerted police to what had happened when he arrived home.

Detective Jeffrey Waco subsequently interviewed Soliz. Soliz admitted following Subramanian, pulling up next to him, taking the police report, and stating, " 'Don't testify against my friend.' "

b. *Defense case.*

Soliz testified in his own defense. He denied following Subramanian home. Instead, Subramanian pulled up alongside Soliz on Topanga Boulevard. Soliz recognized Subramanian, sped up, switched lanes in front of the Integra, and stopped at a red light. He exited his car, greeted Subramanian, and gestured for Subramanian to open the door. Soliz then asked whether Subramanian was going to court and whether he knew the date of any court proceedings, because Soliz wished to participate in them. Subramanian did not respond and Soliz returned to his car. Soliz did not take any paperwork from the car.

Soliz contended he was coerced by detectives into writing an inculpatory statement.

2. *Procedure.*

Trial was by jury. Soliz was convicted of dissuading a witness by force or threat (§ 136.1, subd. (c)(1)), and second degree robbery (§ 211). The jury further found Soliz acted maliciously and used or threatened to use force during commission of the section 136.1 offense. Soliz's motion for a new trial was denied. He admitted suffering a prior conviction and serving a prior prison term within the meaning of section 667.5, subdivision (b). The trial court sentenced Soliz to a term of six years in prison. It imposed a restitution fine, a suspended parole restitution fine, and a court security fee. Soliz appeals.

DISCUSSION

1. *The evidence was sufficient to support Soliz's conviction for dissuading a witness by force or threat.*

Soliz challenges the sufficiency of the evidence supporting his conviction for dissuading a witness by force or threat (§ 136.1, subd. (c)(1)). He asserts that there was

insufficient evidence he used or threatened to use force when attempting to discourage Subramanian from testifying. He asserts that the prosecution proved, "at best" that he "made a vague threatening statement" to Subramanian.

When determining whether the evidence was sufficient to sustain a criminal conviction, we review the entire record in the light most favorable to the judgment to determine " 'whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citations.]" (*People v. Hillhouse* (2002) 27 Cal.4th 469, 496; *People v. Halvorsen* (2007) 42 Cal.4th 379, 419; *People v. Carter* (2005) 36 Cal.4th 1215, 1257-1258.) We presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053; *People v. Wader* (1993) 5 Cal.4th 610, 640.) Reversal is not warranted unless it appears " 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Section 136.1 makes it a criminal offense to knowingly and maliciously dissuade or attempt to dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law. "The offense can be either a misdemeanor or felony; if the perpetrator tried to dissuade by using force or the threat of force, it is a felony. (§ 136.1, subd. (c).)" (*People v. Ortiz* (2002) 101 Cal.App.4th 410, 415-416.)[3] "The crime of intimidating a witness requires proof that the defendant

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[3] Section 136.1 provides, in pertinent part: "(a) Except as provided in subdivision (c), any person who does any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison: [¶] (1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law. [¶] (2) Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law. [¶] . . . . [¶] (c) Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four

specifically intended to dissuade a witness from testifying. [Citations.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1210.)

There is no requirement that the threat of force be explicit; the plain language of the statute provides that the threat may be implied. (§ 136.1, subd. (c)(1).) " 'There is, of course, no talismanic requirement that a defendant must say "Don't testify" or words tantamount thereto, in order to commit the charged offenses. As long as his words or actions support the inference that he . . . attempted by threat of force to induce a person to withhold testimony [citation], a defendant is properly' convicted of a violation of section 136.1, subdivision (c)(1)." (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1343-1344 [a rational juror could find defendant's statement that he would talk to the " 'guys from Happy Town,' " a criminal street gang, was an implied threat to have gang members inflict violence on the victim]; *People v. McElroy* (2005) 126 Cal.App.4th 874, 877 [defendant violated section 136.1 when, during an argument, he grabbed and hung up telephone when his girlfriend said she was calling police].)

Here, there was sufficient evidence of an implied threat of force. Soliz, upon learning that his friend had been arrested for stealing Subramanian's car, followed Subramanian, a complete stranger to him, as Subramanian traveled home. Alarmingly, Soliz tailgated Subramanian as he drove down a busy thoroughfare. Soliz then pulled up abruptly and stopped in front of Subramanian, forcing Subramanian to stop his car in a busy traffic lane. Soliz immediately approached Subramanian and motioned for him to open his door. Subramanian opened the door only because he was afraid. Soliz reached inside and took the police report, which contained Subramanian's personal identifying information. Soliz said, " 'Don't come to court with this paper. And my friend got arrested. He's going to jail. Don't come to court,' " and " 'You better not testify against my friend.' " Soliz's tone of voice was "scary" and "threatening." He spoke loudly. Subramanian did not feel free to leave, because his car was blocked. Subramanian

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years under any of the following circumstances: [¶] (1) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim or any third person or the property of any victim, witness, or any third person."

understood Soliz to have threatened him, and took the threat seriously, calling the police immediately upon returning home.

This evidence amply proved an implied threat. Soliz's behavior was unusual, aggressive and threatening. Jurors could reasonably infer that Soliz's menacing conduct of cutting Subramanian off and forcing him to stop in the middle of traffic, commanding Subramanian not to testify in a loud and "scary" voice, and taking a police report containing personal information, amounted to an implied threat to harm Subramanian if he failed to comply. Soliz could have had no need for the report except to obtain Subramanian's address and telephone numbers, giving him future access to Subramanian if Subramanian decided to testify. By taking the police report, Soliz clearly telegraphed the message that, should Subramanian testify, Soliz would know how to find him. This message was not lost on Subramanian: he testified that he felt scared "because the paper has all my phone number, address, all the information." As noted *ante*, there is no requirement that the defendant actually say "don't testify" as long as his words or actions support an inference that he attempted by force or threat of force to induce a person not to report a crime. (*People v. Mendoza, supra,* 59 Cal.App.4th at p. 1344.) Soliz's actions were intended to dissuade Subramanian from testifying. The evidence showed Subramanian's fear was genuine and reasonable. In sum, the combination of Soliz's actions and words provided sufficient evidence. (See generally *People v. Young, supra,* 34 Cal.4th at p. 1210.)

2. *The trial court properly declined to instruct on the lesser included offense of theft.*

Soliz next contends that the trial court erred by refusing the defense request to instruct on theft, a lesser included offense of robbery. The trial court concluded there was no substantial evidence supporting such an instruction. The trial court's ruling was correct.

A defendant has a constitutional right to have the jury determine every material issue presented by the evidence. (*People v. Benavides* (2005) 35 Cal.4th 69, 102.) A trial court must therefore "instruct fully on all lesser necessarily included offenses

supported by the evidence." (*People v. Breverman* (1998) 19 Cal.4th 142, 148-149; *People v. Benavides, supra*, at p. 102; *People v. Heard* (2003) 31 Cal.4th 946, 980.) "On the other hand, the court is not obliged to instruct on theories that have no such evidentiary support." (*People v. Breverman, supra*, at p. 162.) " ' " 'Substantial evidence is evidence sufficient to "deserve consideration by the jury," that is, evidence that a reasonable jury could find persuasive.' " ' [Citation.]" (*People v. Benavides, supra*, at p. 102; *People v. Heard, supra*, at p. 981.) Where the evidence is but " 'minimal and insubstantial,' " the trial court need not instruct on a lesser included offense. (*People v. Barton* (1995) 12 Cal.4th 186, 201.)

Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear. (§ 211; *People v. Gomez* (2008) 43 Cal.4th 249, 254.) Theft is a lesser included offense of robbery, which does not require the additional element of force or fear. (*People v. Combs* (2004) 34 Cal.4th 821, 856; *People v. Turner* (1990) 50 Cal.3d 668, 690; *People v. Reeves* (2001) 91 Cal.App.4th 14, 51.) To support a robbery conviction, the evidence must show that the requisite intent to steal arose either before or during commission of the act of force. (*People v. Marshall* (1997) 15 Cal.4th 1, 34; *People v. Reeves, supra*, at p. 53.) If property is taken without the use of force or fear, the offense is theft, not robbery. (*People v. Reeves, supra*, at p. 53.) Likewise, if intent to take the property arises only after force or fear is applied, the offense is theft. (*People v. Sakarias* (2000) 22 Cal.4th 596, 620.)

Soliz asserts that a theft instruction should have been given because, upon the evidence presented, jurors could have concluded (1) the taking was not accomplished by force or fear, or (2) Soliz did not form the intent to steal until after any force or fear was used. These contentions are meritless.

First, there was no evidence from which the jury could have found Soliz committed a theft, yet found the element of fear absent. Soliz asserts that "[o]ther than reaching over Subramanian to take the vehicle report, there was no other physical display of aggression or intimidation." This argument ignores the facts. Soliz did not simply

reach across a car seat to pick up a piece of paper. As we have discussed at length in the preceding section, in order to get the police report, Soliz abruptly pulled in front of Subramanian's vehicle, forcing Subramanian to stop in a traffic lane; blocked his vehicle's path, preventing him from leaving; commanded him to open his door; and then almost immediately reached into the vehicle to grab the report. Subramanian testified that he opened his door because he was frightened. There was simply no evidence upon which the jury could have concluded Soliz took the police report, but not through the use of fear. "[R]obbery, like larceny, is a continuing offense. All the elements must be satisfied before the crime is completed. However . . . no artificial parsing is required as to the precise moment or order in which the elements are satisfied." (*People v. Gomez, supra,* 43 Cal.4th at p. 254, fn. omitted.) Soliz's argument rests upon an artificial compartmentalization of his actions.

Soliz's second contention fares no better. Soliz is correct that "[t]o support a robbery conviction, the evidence must show that the requisite intent to steal arose either before or during the commission of the act of force. [Citation.] '[I]f the intent arose only after the use of force against the victim, the taking will at most constitute a theft.' [Citation.] The wrongful intent and the act of force or fear 'must concur in the sense that the act must be motivated by the intent.' [Citations.]" (*People v. Marshall, supra,* 15 Cal.4th at p. 34.) Soliz contends that here, there was no concurrence of act and intent because the jury could have concluded he did not see the police report until he was standing beside Subramanian's car, and therefore did not form the intent to take it until after application of any force or fear was complete.

The evidence strongly suggested Soliz pursued and stopped Subramanian in order to take the police report, in an effort to intimidate him and prevent him from testifying. The entire incident was very brief. Soliz reached across and took the report immediately after Subramanian opened the door. As Subramanian explained, Soliz "came over to the car and came to my window side and he [motioned with] his hand to open the door, and I opened the door. He took the yellow police report and said, 'Don't come to court with that paper. My friend got arrested.' And then he walked away and he was talking

something, but . . . I closed [the] door . . . ." This evidence is not readily susceptible to the interpretation urged by Soliz, i.e., that he was unaware of the existence of the police report and formed the intent to steal it only after the application of force was complete.

Even if Soliz did not originally intend to take the police report, the evidence showed his intent to do so must have arisen *during* commission of the application of force or fear. (See *People v. Marshall, supra,* 15 Cal.4th at p. 34.) Soliz's contrary argument fails because it rests on an improper parsing of each moment of the crime. (*People v. Gomez, supra,* 43 Cal.4th at p. 254.) The cases cited by Soliz are inapposite, in that they address the question of whether a theft instruction must be given when evidence showed the intent to steal arose only after a victim was killed. (See *People v. Webster* (1991) 54 Cal.3d 411, 443; *People v. Marshall, supra,* 15 Cal.4th at p. 34.) The trial court properly declined to instruct on theft.

3. *Purported instructional errors.*

Without objection, the trial court instructed the jury with the standard versions of CALCRIM Nos. 300, 318, and 1600. Appellant contends these instructions were defective, requiring reversal of his convictions.

a. *Applicable legal principles.*

When reviewing a purportedly ambiguous jury instruction, we ask whether there is a reasonable likelihood the jury has applied the challenged instruction in a way that violates the Constitution. (*People v. Richardson* (2008) 43 Cal.4th 959, 1028; *People v. Crew* (2003) 31 Cal.4th 822, 848; *People v. Smithey* (1999) 20 Cal.4th 936, 963.) " 'In conducting this inquiry, we are mindful that " 'a single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge.' " [Citations.]' [Citation.]" (*People v. Richardson, supra,* at p. 1028; *Middleton v. McNeil* (2004) 541 U.S. 433, 437; *People v. Harrison* (2005) 35 Cal.4th 208, 252.)
" 'Additionally, we must assume that jurors are intelligent persons and capable of understanding and correlating all jury instructions which are given.' [Citation.]" (*People v. Richardson, supra*, at p. 1028.) "[N]ot every ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation. The question is ' "whether

the ailing instruction . . . so infected the entire trial that the resulting conviction violates due process." ' " (*Middleton v. McNeil, supra,* at p. 437.)

b. *Waiver.*

The People urge that Soliz has forfeited his challenges to all three instructions because he failed to object to them or request clarification or amplification below. (See *People v. Hillhouse, supra,* 27 Cal.4th at p. 503 [a "party may not argue on appeal that an instruction correct in law was too general or incomplete, and thus needed clarification, without first requesting such clarification at trial"].) However, an appellate court may review any instruction given, even in the absence of an objection, "if the substantial rights of the defendant were affected thereby." (§ 1259; *People v. Smithey, supra,* 20 Cal.4th at pp. 976-977, fn. 7; *People v. Andersen* (1994) 26 Cal.App.4th 1241, 1249 [to determine whether a defendant's substantial rights were affected, an appellate court must examine the merits of the claim at least to the extent of ascertaining whether error was prejudicial].) Solis's argument is that the instructions were not correct in law, and therefore we address the merits of his claims.

c. *CALCRIM No. 300.*

The trial court instructed the jury with the standard version of CALCRIM No. 300, which provided, "Neither side is required to call all witnesses who may have information about the case or to produce all physical evidence that might be relevant." Soliz contends this instruction impermissibly shifted the burden of proof to him, thereby reducing the People's burden of proof. He posits that by instructing the jury that the defense need not produce " 'all' " relevant evidence, the instruction implies that the defendant must produce " 'some' " evidence. We are unconvinced.

As Soliz acknowledges, the instruction has been repeatedly upheld against similar arguments. (*People v. Anderson* (2007) 152 Cal.App.4th 919, 937-938; *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1189-1190; *People v. Felix* (2008) 160 Cal.App.4th 849, 858; *People v. Golde* (2008) 163 Cal.App.4th 101, 104, 117.) *Anderson,* for example, pointed out that *People v. Simms* (1970) 10 Cal.App.3d 299, approved CALJIC No. 2.11, an instruction analogous to CALCRIM No. 300. (*People v. Anderson, supra,* at p. 938;

see also *People v. Ibarra, supra,* at pp. 1189-1190.) In *Simms,* as here, the appellant argued that the instruction could have led the jury to infer the burden of proof was to be shared by the People and the defendant. *Simms* disagreed, reasoning, "the instruction is a correct statement of law and that it was proper to so instruct. [Citations.]" (*People v. Simms, supra,* at p. 313.) CALCRIM No. 300 is the successor instruction to CALJIC No. 2.11 and contains similar language. Furthermore, the jury in the instant case was instructed regarding the presumption of innocence and the burden of proof. (CALCRIM No. 220.) Under these circumstances, there is no reasonable likelihood the jury applied the instruction in an unconstitutional manner.

d. *CALCRIM No. 318.*

The trial court instructed with CALCRIM No. 318, which provided: "You have heard evidence of a statements [*sic*] that a witness made before the trial. If you decide that the witness made (those) statements, you may use (those) statements in two ways: [¶] 1. To evaluate whether the witness's testimony in court is believable; [¶] AND [¶] 2. As evidence that the information in (those) earlier statements is true." Soliz contends that this instruction impermissibly lessened the prosecution's burden of proof by creating an improper presumption that a witness's unsworn, out-of-court statements are both true and deserving of greater belief than statements made in court under oath.

We do not believe CALCRIM No. 318 is susceptible to such an interpretation. "CALCRIM No. 318 tells the jurors how they may use the prior statements '[i]f [they] decide that the witness made those statements . . . .' Thus, the 'may' comes into play only after the jurors have found the statements were made. The instruction does not allow the jurors to ignore evidence." (*People v. Golde, supra,* 163 Cal.App.4th at p. 120; accord *People v. Felix, supra,* 160 Cal.App.4th at p. 859.) CALCRIM No. 318 does not instruct the jurors to accept or presume the information in a witness's earlier out-of-court statement is true. Nothing in the instruction creates a mandatory presumption. Likewise, nothing in the instruction tells the jury to give greater weight to an out-of-court statement than to a witness's in-court testimony. The instruction correctly states the law.

e. *CALCRIM No. 1600.*

Soliz next asserts that the standard instruction on robbery, CALCRIM No. 1600, was deficient because (1) it did not inform the jury that a victim's fear must be reasonable and that the victim must actually be afraid, and (2) did not adequately define "force" because it did not state that the force used must be more than that necessary to accomplish the taking.[4] We are not persuaded.

People v. Anderson, *supra*, 152 Cal.App.4th 919, rejected identical arguments that CALCRIM No. 1600 was deficient because it did not require proof the victim was actually afraid, and did not require proof of force beyond that necessary to accomplish seizure of the property. *Anderson* held there was "no requirement that the instruction define the terms fear or force as defendant suggests." (*Id.* at p. 945.) The court acknowledged that "the fear necessary for robbery is subjective in nature, requiring proof 'that the victim was in fact afraid, and that such fear allowed the crime to be

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[4] CALCRIM No. 1600 provided: "To prove that the defendant is guilty of this crime, the People must prove that: [¶] 1. The defendant took property that was not his own; [¶] 2. The property was taken from another person's possession and immediate presence; [¶] 3. The property was taken against that person's will; [¶] 4. The defendant used force or fear to take the property or to prevent the person from resisting; [¶] AND [¶] 5. When the defendant used force or fear to take the property, he intended (to deprive the owner of it permanently/or to remove it from the owner's possession [so] that the owner would be deprived of a major portion of the value or enjoyment of the property). [¶] The defendant's intent to take the property must have been formed before or during the time he used force or fear. If the defendant did not form this required intent until after using the force or fear, then he did not commit robbery. [¶] A person takes something when he or she gains possession of it and moves it some distance. The distance moved may be short. [¶] The property taken can be of any value, however slight. [¶] Fear, as used here, means fear of (injury to the person himself or herself,/or injury to the person's family or property[,] [or] [immediate injury to someone else present during the incident or to that person's property).] [¶] Property is within a person's immediate presence if it is sufficiently within his or her physical control that he or she could keep possession of it if not prevented by force or fear. [¶] An act is done against a person's will if that person does not consent to the act. In order to consent, a person must act freely and voluntarily and know the nature of the act."

accomplished.' " (*Id.* at p. 946; *People v. Mungia* (1991) 234 Cal.App.3d 1703, 1709, fn. 2.) *Anderson* also recognized that the force necessary to elevate a theft to a robbery must be something more than that required to seize the property. (*People v. Anderson, supra,* at p. 946.) *Anderson* reasoned that these principles did not compel a conclusion CALCRIM No. 1600 was deficient. "[D]efendant cites no authority for the proposition that the jury must be instructed on these aspects of the force or fear elements. '[W]hen terms have no technical meaning peculiar to the law, but are commonly understood by those familiar with the English language, instructions as to their meaning are not required.' [Citation.]" (*Id.* at p. 946.) The terms "force" and "fear," as used in the definition of robbery, have no technical meaning peculiar to the law, and are presumed to be within jurors' understanding. (*Ibid.*; *People v. Anderson* (1966) 64 Cal.2d 633, 639; *People v. Griffin* (2004) 33 Cal.4th 1015, 1025–1026; *People v. Mungia, supra,* 234 Cal. App. 3d at p. 1708.)

Soliz acknowledges that courts have generally held "force" has no technical meaning, but asserts that this is not true when the evidence raises the issue of whether the force used was substantially more than that required to commit the underlying offense. However, even if Soliz is correct, the instant matter involved a taking by fear, not force. Soliz did not yank the paperwork from the victim's hands. Instead, the victim did not resist due to fear. "Hence, defendant's argument about the level of force required has no application in this case. The trial court was not required to define the terms 'fear' and 'force' for the jury." (*People v. Anderson, supra,* 152 Cal.App.4th at p. 946.)

4. *Sentencing error.*

At sentencing, the trial court imposed a one-year section 667.5, subdivision (b) prior prison term enhancement on the base count, count 2. Soliz contends the trial court erred by also imposing, but staying, a second section 667.5, subdivision (b) enhancement on count 1. Soliz contends the second enhancement should have been stricken rather than stayed. The People agree.

We agree as well. Enhancements for prior convictions "do not attach to particular counts but instead are added just once as the final step in computing the total sentence."

(*People v. Tassell* (1984) 36 Cal.3d 77, 90, fn. omitted, overruled on other grounds in *People v. Ewoldt* (1994) 7 Cal.4th 380, 387, 401; *People v. Smith* (1992) 10 Cal.App.4th 178, 182-183.) The failure to impose or strike an enhancement is a legally unauthorized sentence subject to correction for the first time on appeal. (*People v. Bradley* (1998) 64 Cal.App.4th 386, 391; *People v. Flores* (2005) 129 Cal.App.4th 174, 187.) Accordingly, we order the section 667.5, subdivision (b) enhancement imposed on count 1 stricken.

5. *Review of in camera Pitchess examination.*

Before trial, Soliz sought discovery of peace officer personnel records pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. Soliz sought material related to coercive conduct, violation of constitutional rights, false police reports, and other evidence of misconduct amounting to moral turpitude. The trial court found good cause for in camera review. On December 17, 2007, the trial court conducted an in camera review of the officer's records. It determined that some discoverable material existed and ordered disclosure.

Soliz requests that we review the sealed record of the trial court's *Pitchess* review to determine whether the trial court abused its discretion by failing to order additional disclosure of information.

Trial courts are vested with broad discretion when ruling on motions to discover peace officer records (*People v. Samayoa* (1997) 15 Cal.4th 795, 827; *People v. Memro* (1995) 11 Cal.4th 786, 832), and we review a trial court's ruling for abuse of discretion. (*People v. Mooc, supra*, 26 Cal.4th at p. 1228; *People v. Hughes* (2002) 27 Cal.4th 287, 330.) We have reviewed the sealed transcript of the in camera hearing conducted on December 17, 2007. That transcript constitutes an adequate record of the trial court's review of any documents provided to it, and reveals no abuse of discretion.

DISPOSITION

The section 667.5, subdivision (b) enhancement imposed on count 1 is ordered stricken. The clerk of the superior court is directed to prepare an amended abstract of judgment and forward it to the Department of Corrections. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.